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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,675	12/30/2003	Scott K. Brown	06975-379001 / AOL 139	2909
26171	7590	12/26/2007	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			LEE, CHUN KUAN	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/747,675	BROWN ET AL.
	Examiner Chun-Kuan (Mike) Lee	Art Unit 2181

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 November 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
  - 4a) Of the above claim(s) 35 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-34 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 December 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    - 1) Certified copies of the priority documents have been received.
    - 2) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

**RESPONSE TO ARGUMENTS**

1. Applicant's arguments with respect to claims 1-35 have been considered but are moot in view of the new grounds of rejection. Currently claim 35 is withdrawn and claims 1-34 are pending for examination.
  
2. In response to applicant's, on page 10, last paragraph to page 11, 2<sup>nd</sup> paragraph, regarding the amended independent claims 1, 19 and 31 rejected under 35 U.S.C. 103(a) that the combination of references does not teach/suggest the features of the claimed invention of accessing a rule set personalized to at least one user from a source; applicant's arguments have fully been considered, but are not found to be persuasive.

Please note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The examiner relied on the references as following for the teaching of the above features of the claimed invention:

Monteiro teaches a client (Fig. 1, ref. 40) accessing a rule set from a source (Fig 1; Fig. 8B and col. 7, ll. 21-30), as the rule set being configured to respond to an arising condition comprising deterioration of the situation associated with packet loss and network congestion.

Marks teaches accessing a rule set personalized (e.g. customized list of programming and information) to at least one user ([0032] and [0039]).

3. In respond to applicant's arguments, on page 11, last paragraph, regarding the amended claims 9, 21 and 34 rejected under 35 U.S.C. 103(a) that the combination of reference does not teach/suggest the features associated with the claimed invention of responding to the network interrupt by accessing electronic media locally stored at the client; applicant's arguments have fully been considered, but are not found to be persuasive.

Please note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As Monteiro and Marks teach responding to the network interrupt by accessing electronic media locally (e.g. within a home or office) stored (Monteiro, col. 8, ll. 16-30 and Marks , [0031]), wherein the interrupt in the network service in streaming of the regular programming resulting from the reception of the cueing signal and in response, the advertising stream buffered in the user's computer is inserted into the stream of regular programming.

#### **I. ELECTION / RESTRICTION**

4. In accordance to MPEP § 821.03, the newly submitted claim 35 following the first office action by the examiner, see MPEP § 818.01 and § 818.02(a), is directed to an

invention that is independent or distinct from the invention originally claimed for the following reasons:

Specie I: claims 1-34 are directed toward a system with a single client having an event definition and an event transition.

Specie II: claim 35 is directed toward a system with a first client and a second client having a first and second event definition and a first and second event transition.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 35 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

## **II. REJECTIONS BASED ON PRIOR ART**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5-11, 13-23 and 25-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monteiro et al. (US Patent 6,119,163) in view of Marks et al. (US Pub. 2001/0053944).

6. As per claims 1, 19 and 31, Monteiro teaches a method and a system of enabling access to electronic media comprising:

means for accessing, by a client (Fig. 1, ref. 40), a first track of electronic media from a source (Fig. 1, ref. 10, 20, 30, 50, 60) (Fig. 8B), wherein after proper connection setup, the user (e.g. client) accesses the first track from the source's media server (Fig. 1, ref. 30) as audio packets are transferred to the user to be played;

means for accessing a rule set from the source, the rule set being configured to respond to an arising condition (conditions comprising deterioration of the situation associated with packet loss and network congestion) based on whether the arising condition is met after the first track of electronic media been accessed (col. 7, ll. 21-30), the rule set including:

an event definition describing an event condition to be monitored during a current media state (col. 7, ll. 21-30), wherein the system monitors event condition comprising the deterioration of the situation associated with packet loss and network congestion while audio packets is been transferred to the user;

an event transition that relates the event definition to a new media state to enable the new media to be realized upon detecting the event condition described with respect to the event definition (col. 7, ll. 21-30), wherein the new media state is the transferring of the audio packet at the lower bitrate, to be implemented upon detecting the deterioration of the situation associated with packet loss and network congestion such as the increase in packet loss or the network becoming congested;

means for detecting that the event condition described with respect to the event definition in the rule set has occurred (col. 7, ll. 21-30), wherein the detection is implemented as the system monitors the event condition and adapt to the occurrence of the event condition accordingly; and

means for performing the event transition in response to detecting occurrence of the event condition (col. 7, ll. 21-30), wherein the event transition is implemented as the system adapt to the occurrence of the event condition, such as lowering the audio's bitrate to be transferred to the user.

Monteiro does not teach the method and the system of enabling access to electronic media comprising: wherein the rule set being personalized to at least one user; and wherein the client the accessing, detecting and performing.

Marks teaches an audio internet navigation system comprising a client (e.g. user) accesses (e.g. download) ([0032]), detects and performs ([0039]), as the unsubscribed user (e.g. client) accessing a station that is revenue producing and detects that there is an incoming promotion (e.g. event), wherein the incoming promotion would be played and heard (e.g. performing the event transition to playing the incoming promotion); and

rule set being personalized to at least one user (e.g. customized lists of programming and information) ([0032] and [0039]).

It would have been obvious to one of ordinary skill in this art, at the time of invention was made to include Marks' downloading of the listener specific rule set and customized rule set into Monteiro's accessing of the electronic media for the benefit of expanding the settings preferences available to the user's player as the user is able to

control the enabling/disabling of promotional announcements and also proper regulation of promotional announcements by the station (Marks, [0039]) to obtain the invention as specified in claims 1, 19 and 31.

7. As per claim 2, Monteiro and Marks teach all the limitations of claim 1 as discussed above, where both further teach the method comprising wherein accessing the rule set includes downloading a rule set from a host (Monteiro Fig. 1 and Marks, [0032], [0039]).

8. As per claim 3, Monteiro and Marks teach all the limitations of claim 2 as discussed above, where Marks further teaches the method comprising wherein a media player (Marks, Fig. 1) is invoked before downloading the rule set (Marks, [0032], [0039])

9. As per claim 5, Monteiro and Marks teach all the limitations of claim 1 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media comprising wherein performing the event transition includes accessing a second track, the second track relating to the new media state described in the event transition (Monteiro, col. 7, ll. 21-30), wherein the second track relate to the new media state of the transferring of the first track at the lower bitrate, resulting from the event condition associated with the deterioration of the situation associated with packet loss and network congestion.

10. As per claim 6, Monteiro and Marks teach all the limitations of claim 5 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media comprising wherein accessing the second track includes accessing an instantiation of the first track encoded at a different bit rate (Monteiro, col. 7, ll. 21-30), wherein the second track is the transferring of the first track at the lower bitrate.

11. As per claim 7, Monteiro and Marks teach all the limitations of claim 1 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media comprising wherein accessing the first track includes referencing a location for the electronic media (Monteiro, program guide (upper right corner) of Fig. 18), wherein accessing the first track comprising playing “Smashing Pumpkins Live!” include referencing a location for the electronic media comprising “From La Cigale in Paris”.

12. As per claims 8 and 20. Monteiro and Marks teach all the limitations of claims 1 and 19 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media comprising wherein accessing the rule set with the event definition includes accessing a code segment describing a media player event (event comprising the insertion of the advertising stream) for a media player (Monteiro, Fig. 18) accessing the electronic media (electronic media comprising the first track of audio) that was not configured to process prior to accessing the rule set (Monteiro, col.

8, II. 16-30), wherein the media player playing the audio is not configured to insert the advertising stream without the delivery of the advertising stream in advance of the regular programming.

13. As per claims 9, 21 and 34, Monteiro and Marks teach all the limitations of claims 8, 20 and 31 as discussed above, where both further teach the method and the system of enabling access to electronic media comprising wherein accessing the rule set with the event definition and performing the event transition include accessing the event definition that relates to an interrupt in a network service while accessing the first track, and responding to the network interrupt by accessing electronic media locally (e.g. within a home or office) stored (Monteiro, col. 8, II. 16-30 and Marks , [0031]), wherein the interrupt in the network service in streaming of the regular programming resulting from the reception of the cueing signal and in response, the advertising stream buffered in the user's computer is inserted into the stream of regular programming.

14. As per claims 10 and 22, Monteiro and Marks teach all the limitations of claims 8 and 20 as discussed above, where both further teach the method and the system of enabling access to electronic media comprising wherein accessing the rule set with the event definition and performing the event transition include accessing the event definition that relates to an availability of a prioritized media selection that is now available and notifying the user as to the availability of the prioritized media selection (Monteiro, col. 17, II. 36-41 and Marks, [0096]).

15. As per claims 11 and 23, Monteiro and Marks teach all the limitations of claims 8 and 20 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media comprising wherein accessing the rule set with the event definition and performing the event transition include accessing an event condition within the event definition that describes a playlist that is used to select content, and using the playlist to select content (Monteiro, Fig. 18 and col. 17, ll. 24-27), wherein the playlist is the list of channels displayed in the upper left frame, in the channel guide, utilized for selecting the content.

16. As per claims 13 and 25, Monteiro and Marks teach all the limitations of claims 8 and 20 as discussed above, where both further teach the method and the system of enabling access to electronic media comprising wherein accessing the rule set with the event definition and performing the event transition include accessing an event condition within the event definition that enables an emergency broadcast system (e.g. urgent) to interrupt the first track, and switching to a transmission of the emergency broadcast system (Marks, [0096]).

17. As per claims 14 and 26, Monteiro and Marks teach all the limitations of claims 1 and 19 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media further comprising accessing an event condition within the rule set that relates to a commonly used across a type of media, using the

event definition when the type of media is being used, and performing the event transition when the event associated with the type of media occurs for the media being used (Monteiro, col. 7, ll. 21-30), wherein the rule set, associated with the lowering of data bitrate, is commonly utilized across the audio type media.

18. As per claims 15 and 27, Monteiro and Marks teach all the limitations of claims 1 and 19 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media comprising wherein accessing an event condition related to the type of media, using the event definition, and performing the event transition include using a rule set that relates to video, audio, or data visualization (Monteiro, col. 4, ll. 15-21).

19. As per claims 16 and 28, Monteiro and Marks teach all the limitations of claims 1 and 19 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media further comprising accessing an event condition that is commonly used across a particular class of content or a theme (audio data of various classification comprising classic rock, college rock, cool jazz, etc), using the event definition when the particular class of content or the theme is being used, and performing the event transition when the event associated with the type of particular class of content or the theme occurs (Monteiro, upper left corner of Fig. 18 and col. 7, ll. 21-30), wherein the event condition associated with the deterioration of the situation

associated with packet loss and network congestion is commonly apply across the particular classification of audio data.

20. As per claims 17 and 29, Monteiro and Marks teach all the limitations of claims 1 and 19 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media comprising wherein detecting that the event in the rule set has occurred includes determining that access to the first track has been interrupted (Monteiro, col. 15, ll. 10-16), wherein the interrupting is determined by utilizing Ping Objects, as the Ping Objects are sent to and return from the user periodically to verify that the computer is working and active and if Ping Object is not returned, interrupt is determined.

21. As per claims 18 and 30, Monteiro and Marks teach all the limitations of claims 1 and 19 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media further comprising wherein detecting that the event in the rule set has occurred includes receiving state information (Version Object) from a communications interface (Monteiro, Fig. 8B; col. 11, ll. 28-32 and col. 12, ll. 1-15), wherein prior to the user accessing the audio the state information comprising the version of protocol is received through the communication interface.

22. As per claims 32, Monteiro and Marks teach all the limitations of claim 1 as discussed above, where Monteiro further teaches the method and the system of

enabling access to electronic media comprising wherein the source include a first server structure (Monteiro, Fig. 1, ref. 10, 20, 30, 50, 60) and arrange to:

enable access to the first track (Monteiro, Fig. 1, ref. 30), wherein the audio (first track) can be accessed through media server (Monteiro, Fig. 8B); and  
enable access to the rule set (Monteiro, Fig. 2, ref. 150 and col. 4, ll. 38-49), wherein the rule set associated with the insertion of the advertising stream is accessed (Monteiro, col. 8, ll. 1-30).

23. As per claims 33, Monteiro and Marks teach all the limitations of claim 1 as discussed above, where Monteiro further teaches the method and the system of enabling access to electronic media comprising:

wherein the source include a first server (Monteiro, media server 30 of Fig. 1) structured and arranged to enable access to the first track (Monteiro, Fig. 8B), wherein the audio (first track) can be accessed through media server,

and a second server (Monteiro, supervisory workstation 150 of Fig. 2) structured and arranged to enable access to the rule set (Monteiro, col. 4, ll. 38-49), wherein the rule set associated with the insertion of advertising stream (stream of commercial advertising) (Monteiro, col. 8, ll. 1-30) is control and manage by the supervisory workstation.

24. Claims 4, 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monteiro et al. (US Patent 6,119,163) in view of Marks et al. (US Pub.

2001/0053944) as applied to claims 1, 8 and 20 above, and further in view Rowlands (US Pub. 2002/0083346).

Monteiro and Marks teaches all the limitations of claims 1, 8 and 20 as discussed above. But, Monteiro and Marks do expressly teach the method and the system of enabling access to electronic media comprising:

wherein accessing the first track requires accessing the rule set before the content is rendered; and

wherein accessing the rule set with the event definition and performing the event transition include accessing an event condition within the event definition that describes a licensing restriction and selecting content that complies with the licensing restriction.

Rowlands teaches a system and a method comprising:

a ticket T utilized for proving authorization have been obtained by a user to play a musical data ([0030]); and

the user providing the ticket T to a sender for verification of the ticket T and when the sender verifies that the ticket T is valid, the sender transmits the requested musical data to the user ([0035]-[0037]).

It would have been obvious to one of ordinary skill in this art, at the time of invention was made to include Rowlands' ticket T into Monteiro and Marks' accessing of the electronic media for the benefit of protecting the right and interest of copyright holders associated with the musical data as the musical data is transferred from the source to the user (Rowlands, [0003]-[0004]). The resulting combination of the references teaches the rule set further comprising wherein the event definition

describes the verification of the ticket T and enabling the user to select the electronic media that complied with the verified ticket T, and furthermore, the verification of the ticket T must be implemented before the electronic media associated with the ticket T can be played.

**III. CLOSING COMMENTS**

**Conclusion**

**a. STATUS OF CLAIMS IN THE APPLICATION**

The following is a summary of the treatment and status of all claims in the application as recommended by M.P.E.P. 707.07(i):

**a(1) CLAIMS REJECTED IN THE APPLICATION**

Per the instant office action, applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, claims 1-35 have received a final action on the merits. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**b. DIRECTION OF FUTURE CORRESPONDENCES**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chun-Kuan (Mike) Lee whose telephone number is (571) 272-0671. The examiner can normally be reached on 8AM to 5PM.

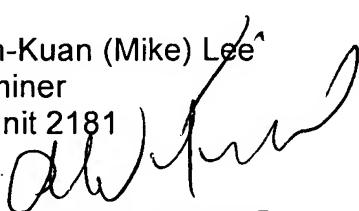
**IMPORTANT NOTE**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alford Kindred can be reached on (571) 272-4037. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 17, 2007

Chun-Kuan (Mike) Lee  
Examiner  
Art Unit 2181

  
ALFORD KINDRED  
SUPERVISORY PATENT EXAMINER